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Compensatory Damage Awards Should Not be Remanded Despite Reversal of Judgment on Separate Claims Where the Verdict Specifically Enumerates the Damages Against Each Defendant for Each Cause of Action: *Paves v. Corson*

CIVIL PROCEDURE – JURY AWARDS – JURY DETERMINATIONS – The Pennsylvania Supreme Court held that a compensatory damage award should not be overturned where the verdict specifically enumerates the damages against each defendant for each cause of action unless it is clear the amount awarded resulted from some improper influence.

Paves v. Corson, 801 A.2d 546 (Pa. 2002)

In 1986, while Sidonie Paves resided in Florida, she began to fear for her safety as the result of a burglary at her home.¹ In the fall of 1986, she traveled from her home in Florida to Pennsylvania, where both her son and daughter lived.² She arrived at her daughter's house on October 31, 1986.³ Her son learned of her arrival and met Paves at his sister's house.⁴ After declaring that she wanted a relationship with her children, Paves expressed a desire for their assistance in safeguarding \$82,000 in checks.⁵ Immediately thereafter, Paves' son, who was a doctor, had her admitted to Chestnut Hill Hospital.⁶ While there, Paves began taking various medications that her son prescribed for her.⁷ During her stay in the hospital, Paves signed a will in which she left her entire estate to her children.⁸ She also signed a power of attorney in favor of

1. *Paves v. Corson* (Paves I), 765 A.2d 1128, 1131 (Pa. Super. Ct. 2000).

2. *Id.* Mrs. Paves had been estranged from her children, Barry and Carol Corson, for approximately twenty years. *Id.* She traveled to Pennsylvania hoping to renew her relationship with them. *Id.*

3. *Id.*

4. *Id.*

5. *Paves I*, 765 A.2d at 1131. She brought the checks back with her from Florida. *Id.*

6. *Id.* at 1132. Paves' son had admitting privileges at Chestnut Hill Hospital in Pennsylvania. *Id.*

7. *Id.*

8. *Id.* Mr. Stewart Liebman, Esquire, who at the time was a neighbor and friend of Barry Corson, drafted the will signed by Paves. *Id.*

her son.⁹ After her release from the hospital and during the next five years, Paves resided with her daughter.¹⁰ Using the power of attorney, Paves' son closed all of her remaining accounts, took control of the funds, and spent over \$600,000 of Paves' money.¹¹ In addition, Paves' children sold her real estate, jewelry and other personal property and kept the proceeds.¹² Finally in 1991, Paves confronted her children about these matters and was subsequently ejected from her daughter's home.¹³

Paves filed suit in 1993 in the Court of Common Pleas of Philadelphia County, against her children seeking compensation for conversion, intentional infliction of emotional distress, negligent infliction of emotional distress, civil assault, battery, breach of fiduciary relationship, breach of confidential relationship, undue influence, equitable claims for constructive trust, and medical negligence.¹⁴ At trial, a motion for directed verdict was granted, and the court dismissed the claim of battery against Carol Corson, and the claims of negligent infliction of emotional distress and civil assault against both children.¹⁵ The remaining claims were submitted to the jury.¹⁶ The jury rendered a verdict in favor of Paves.¹⁷

On appeal to the Superior Court of Pennsylvania, the appellees argued, *inter alia*, that the trial court had erred in refusing to grant a judgment notwithstanding the verdict on the battery and emotional distress claims and in failing to grant a remittitur on

9. *Id.* Although at that time Paves signed the power of attorney, she testified that she did so because she was told that it was a second copy of the will. *Id.*

10. *Paves v. Corson (Paves II)*, 801 A.2d 546, 547 (Pa. 2002).

11. *Paves I*, 765 A.2d at 1132. Upon release from the hospital, Mrs. Paves and Barry traveled to Florida where, using the power of attorney, he closed out all of Paves' remaining accounts. Taking control of these funds, Barry then gave gifts to various family members, including Carol and himself, and lent money to persons unknown to Paves and without her permission. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* Prior to trial, Paves withdrew the claims for constructive trust and medical malpractice. *Id.*

15. *Paves I*, 765 A.2d at 1132.

16. *Id.*

17. *Id.* As against Dr. Barry Corson, the jury awarded battery \$600,000; intentional infliction of emotional distress \$900,000; breach of fiduciary duty \$375,916; breach of confidential relationship \$106,354; punitive damages \$1,000,000; and conversion \$41,000. *Id.* As against Carol Corson, the jury awarded breach of confidential relationship \$150,000; intentional infliction of emotional distress \$500,000; punitive damages \$400,000; and conversion \$59,500. *Id.*

certain compensatory and punitive damages.¹⁸ More specifically, they argued that the trial court erred in the following: (1) allowing the battery claim against Barry Corson to go to the jury; (2) allowing the claims for intentional infliction of emotional distress to go to the jury in the absence of medical testimony to support the claims; (3) allowing the conversion claims to go to the jury; (4) allowing Paves to testify that she was "drugged," "confused," and had other alleged effects of medications prescribed by Barry Corson; (5) failing to strike the testimony of Paves' purported forensic accounting expert and failing to grant a new trial because of his testimony; (6) giving an "adverse inference" instruction against the appellants for their failure to produce certain documents; (7) giving fraud and undue influence charges to the jury; (8) failing to grant a remittitur on the verdict; and (9) allowing punitive damages on the claims of battery, conversion, and intentional infliction of emotional distress.¹⁹ The appellees also asserted that the additional claims of assault and negligent infliction of emotional distress were properly dismissed by the trial court.²⁰ To challenge the trial judge's grant of a directed verdict on these dismissed claims, Paves cross-appealed.²¹

The Pennsylvania Superior Court affirmed in part and reversed and remanded in part.²² The court concluded that while the conversion claim was properly submitted to the jury, the trial court erred in its submission of the claims for battery and intentional infliction of emotional distress to the jury.²³ The court agreed that Paves had introduced insufficient evidence in support of her claims of battery and intentional infliction of emotional distress and ordered that the awards resulting from the error be vacated.²⁴ Also, in regard to the award of punitive damages, the court concluded that because it could have been based in part on the claims of intentional infliction of emotional distress or battery, both of which had been overturned, it too had to be vacated.²⁵ The court

18. *Paves II*, 801 A.2d at 548. Judgment notwithstanding the verdict is a judgment rendered in favor of one party despite a verdict in favor of the other party. BLACK'S LAW DICTIONARY 847 (7th Ed. 1999).

19. *Paves I*, 765 A.2d at 1132.

20. *Id.*

21. *Paves I*, 765 A.2d at 1132-33.

22. *Id.* at 1139.

23. *Id.*

24. *Id.*

25. *Id.* The court stated that "where punitive damages were assessed in the case without regard to a specific cause of action, it is impossible to determine which portion of the

remanded the matter for a new trial to reassess damages on the remaining claims: conversion, breach of fiduciary duty, breach of confidential relationship, and punitive damages.²⁶ The court also ordered a new trial to reassess compensatory damages on those same claims.²⁷

Paves appealed to the Supreme Court of Pennsylvania.²⁸ The court agreed to review the case to decide whether the superior court erred in remanding the case for a new trial on both compensatory and punitive damages.²⁹ The court reversed the superior court decision with regard to compensatory damages and remanded the matter, limiting it to the assessment of punitive damages on the surviving claims.³⁰

Writing for the majority, Justice Nigro recognized that because the duty of assessing damages falls within the province of the jury, generally, the court should not interfere with a compensatory damage award unless it is clear that the amount awarded resulted from some improper influence.³¹ The court also acknowledged that in limited circumstances a compensatory damage award might also be set aside due to a post verdict development which undermines the award's validity.³² The appellees fostered the argument that the basis for an affirmation of the superior court's order for remand on compensatory damages was provided by *Smith* and *Shiner*.³³ However, Justice Nigro rejected this argument stating that, unlike the juries in *Smith* and *Shiner*, the jury in the instant matter, issued a verdict that specifically enumerated the damages against each of the defendants for each cause of action.³⁴ Justice

award was attributable to the emotional distress and battery claims that . . . were not properly established." *Id.* at 1137.

26. *Paves I*, 765 A.2d at 1139.

27. *Paves II*, 801 A.2d at 548.

28. *Id.* at 546.

29. *Id.* at 548.

30. *Id.* at 550.

31. *Id.* at 548-49. Those methods of improper influence listed are caprice, prejudice, partiality, or corruption. *Id.*

32. *Paves II*, 801 A.2d at 549. Justice Nigro noted that in both *Shiner v. Moriarty*, 706 A.2d 1228 (Pa. Super. Ct. 1998) and *Smith v. Renaut*, 564 A.2d 188 (Pa. Super. Ct. 1989), juries returned general unallocated compensatory damages awards. *Paves II*, 801 A.2d at 549. However, in each appeal, there were certain causes of actions that were sustained and others that were reversed. *Id.* This was done because the superior court held that it was impossible to determine the portion of the award attributable to the remaining causes of action. *Id.* In both *Smith* and *Shiner*, the courts remanded the matters on the issue of compensatory damages in order for an award to be rendered which would reflect only the damages for the causes of action sustained on appeal. *Id.*

33. *Paves II*, 801 A.2d at 549.

34. *Id.*

Nigro went further in stating that the rationale of *Smith* and *Shiner* was inapplicable to the instant case because here the court could refer to the verdict sheets and easily determine the damages enumerated for each specific, surviving claim.³⁵

Next, the court examined the appellees argument that the jury's assessment of compensatory damages was interfered with by certain evidence admitted at trial in connection with the dismissed claims of battery and emotional distress.³⁶ Appellees believed it to be impossible to determine whether the jury's consideration of this testimony had any impact on the jury's consideration of the financial damages resulting from the breach of duty and conversion claims.³⁷

The majority found no merit in this argument and took the opportunity to express its belief in the trust associated with juries' ability to assess damages.³⁸ Justice Nigro noted that the appellees failed to introduce any evidence in the record that might support their contention that there was some improper influence associated with the verdict.³⁹ The court pointed out that the evidence introduced at trial strongly suggested the contrary.⁴⁰ In light of the breakdown of damages on the verdict sheet, the court found evidence of a thorough and thoughtful allocation among the specific claims.⁴¹ The majority concluded that there was a proper allocation of damages.⁴²

In further support of this conclusion, the majority next examined the lower court's instructions to the jury.⁴³ After such examination, the court found those instructions to have clearly informed the jury that the damages for breach of duty and conversion were

35. *Id.* Nigro stated that when the judgments on certain causes of actions were reversed, the Superior Court was not left with a single, unallocated damage award from which it could not ascertain damages attributable to the surviving claims. *Id.*

36. *Id.* Paves testified regarding certain emotional and physical abuse caused by her children. *Id.*

37. Appellees' Brief at 8, *Paves v. Corson*, 765 A.2d 1128 (Pa. Super. Ct. 2000) (No. 00-412 and 00-478). Appellees claim that because the jury had an inability to calculate the damages on the breach of duty and conversion claims, the evidence was unduly prejudicial. *Paves II*, 801 A.2d at 549.

38. *Paves II*, 801 A.2d at 549-50.

39. *Id.* at 550.

40. *Id.* Paves introduced evidence that the financial damages resulting from her alleged conversion and breach of duty claims exceeded \$1,000,000. *Id.* The jury rendered a verdict awarding over \$730,000 on those claims and a separate award of \$2,000,000 for the claims of battery and emotional distress. *Id.*

41. *Id.*

42. *Id.*

43. *Paves II*, 801 A.2d at 550.

to remain separate and distinct from those for battery and emotional distress.⁴⁴ The majority declared that the trial court's distinction, which contrasted the damages of emotional distress and battery as being such that could not be proven with mathematical certainty and designed to compensate Paves for separate injuries, as adequate.⁴⁵ Justice Nigro, in reliance on the presumption that juries generally follow the court's instructions, concluded that the damages awarded for breach of duty and conversion were those that could only be ascertained with a mathematical certainty and not those whose purpose was to compensate for the effects of emotional or physical abuse.⁴⁶ The majority decided to reverse the superior court's decision in regard to the new trial on compensatory damages and to remand on the limited issue of assessing punitive damages on the remaining claims.⁴⁷

Justice Eakin, in his dissenting opinion, focused on the issue of the jury assigning damages after hearing irrelevant and prejudicial evidence of the two dismissed claims.⁴⁸ Justice Eakin stated that the evidence of the children battering their mother would never be admitted without the existence of the battery count.⁴⁹ Because the battery and the intentional infliction counts were dismissed, Justice Eakin believed that a recalculation was warranted without the contamination of the irrelevant, prejudicial evidence.⁵⁰ While Justice Eakin found the superior court's solution of the matter to be well reasoned, he suggested that the determination of consequences be free from the influence of prejudicial and irrelevant evidence.⁵¹ In conclusion, Justice Eakin suggested that the new jury only be given evidence that is relevant to the damages caused by the surviving counts.⁵² Therefore, the dam-

44. *Id.* The trial court made clear in its instructions that the alleged damages for breach of duty and conversion were that which could be measured with certainty and if awarded would serve as compensation for all the financial losses Paves suffered as a result of the appellees' actions. *Id.*

45. *Id.* The trial court expressed that these damages were to compensate Paves for physical pain, mental anguish, discomfort, inconvenience, . . . distress, . . . embarrassment and humiliation. *Id.*

46. *Id.*

47. *Paves II*, 801 A.2d at 550 (Eakin, J., dissenting).

48. *Id.* (Eakin, J., dissenting).

49. *Id.* at 551. (Eakin, J., dissenting).

50. *Id.* (Eakin, J., dissenting).

51. *Id.* This statement was made in reference to the evidence of the battery and intentional infliction of emotional distress claims. (Eakin, J., dissenting).

52. *Paves II*, 801 A.2d at 551 (Eakin, J., dissenting).

ages could be determined without the influence of the prejudicial and irrelevant evidence of the dismissed claims.⁵³

It is the province of the jury to assess testimony for its worth and if the verdict bears a reasonable resemblance to the damages, the court may not substitute its judgment for that of the jury.⁵⁴ The Supreme Court of Pennsylvania entertained this issue as early as 1922 in its decision of *Brown v. Quaker City Cab Co.*⁵⁵ The plaintiff in *Brown* commenced an action in the Court of Common Pleas of Philadelphia County, seeking compensation for injuries sustained while she was a passenger in the defendant's cab.⁵⁶ The jury returned a verdict in favor of the plaintiff and the defendant appealed.⁵⁷ On appeal, liability for the injury was not at issue.⁵⁸ Instead, the appellant questioned whether the court erred in its reading to the jury a portion of the statement of claim.⁵⁹ Based upon this error, the appellant argued that a new trial should have been granted.⁶⁰ The court however was not persuaded and affirmed the judgment of the lower court.⁶¹ The court stated that the verdict will be disturbed only if the evidence shows no justification for the award rendered and it is so beyond reason that it can be concluded that the amount was reached due to some misconception of the law or evidence.⁶² Accepting the facts as true, the court could not conclude that the verdict was excessive or founded on an improper basis.⁶³

Later, in 1959, the Supreme Court of Pennsylvania clearly communicated that the functions of the court do not include substituting their own judgment in place of the jury's, unless it is warranted.⁶⁴ The case before the court was *Elza v. Chovan*⁶⁵, in which a passenger who sustained injuries as a result of an acci-

53. *Id.* (Eakin, J., dissenting).

54. *Elza v. Chovan*, 152 A.2d 239 (Pa. 1959).

55. 117 A. 681 (Pa. 1922).

56. *Id.* at 681. The claim was based on the negligence of the driver, as the driver was careless in running into the girder of a bridge crossing some railroad tracks. *Id.*

57. *Id.*

58. *Id.* The appellant did not deny this claim.

59. *Id.* The paragraph read to the jury contained a description of plaintiff's injuries. *Id.* There was no mention of the amount of the claim. *Id.*

60. *Brown*, 117 A. at 681. The appellant believed the verdict was excessive as a result of this error. *Id.*

61. *Id.* at 682.

62. *Id.* at 681.

63. *Id.* at 682.

64. *Elza*, 152 A.2d at 240.

65. 152 A.2d 238 (Pa. 1959).

dent while on a motorcycle brought an action.⁶⁶ The jury rendered a verdict in favor of plaintiff; however, the court of common pleas granted plaintiff a new trial for inadequacy of award.⁶⁷ From this, both defendants appealed.⁶⁸ Upon appeal, the superior court reversed this decision and entered a judgment on the verdict, resulting in allocatur to the Supreme Court of Pennsylvania.⁶⁹ While the Supreme Court firmly acknowledged that within the province of the jury lies the assessment of the testimony and the acceptance or rejection of damages, it also declared that if the verdict does not bear a reasonable resemblance to the proven damages, a disturbance of that verdict is warranted.⁷⁰ The court ordered a new trial, finding that the plaintiff proved damages in the amount of \$1,375 and that the jury's award of \$950 was inadequate.⁷¹ Although a new trial was granted, it was warranted for no other reason except the inadequacy of the award.⁷² Without such, the verdict would not have been disturbed by the court, and the province of the jury was left untouched.⁷³

In 1971, the Supreme Court of Pennsylvania decided *Tonik v. Apex Garages, Inc.*, in which the standard of disturbance was further defined.⁷⁴ A jury rendered a \$20,000 award in favor of a pedestrian who brought a personal injury claim against a Philadelphia business owner for injuries she sustained when she fell on a sidewalk in front of the business' premises.⁷⁵ At trial, the pedestrian introduced evidence that there was "a crack" in the pavement in front of the premises, which was concealed by ice, and that this existing negligent condition proximately caused her injuries.⁷⁶ The business owner challenged the award based on the contention that the evidence was insufficient to support a finding of negligence and was not proof as to what caused the pedestrian's

66. *Id.* at 239. The passenger brought suit against both the driver of the motorcycle and the driver of the car that collided with the motorcycle. *Id.*

67. *Id.* at 238. The jury awarded \$950.00 to the plaintiff, which was less than plaintiff's actual medical expenses. *Id.*

68. *Id.* "Allocatur" is used in Pennsylvania to denote permission to appeal. BLACK'S LAW DICTIONARY 75 (7th Ed. 1999).

69. *Elza*, 152 A.2d at 238.

70. *Id.* at 240.

71. *Id.*

72. *Id.*

73. *Id.*

74. 275 A.2d 296 (Pa. 1971).

75. *Id.*

76. *Id.* at 298.

fall.⁷⁷ The court found that within the province of the jury lies the duty of assessing damages and interference by the court is not warranted without a clear showing that the award was the result of caprice, prejudice, partiality, corruption or some other improper influence.⁷⁸ The majority explained that in light of all the facts disclosed in the record, they could not see how the jury acted capriciously or from some improper consideration.⁷⁹ The jury's verdict was sustained and no new trial was granted.⁸⁰

Years later, a more defined standard was introduced by the Superior Court of Pennsylvania in the decision of *Smith v. Renaut*.⁸¹ In *Smith*, the purchaser of real estate attempted to sue the seller, brokering agency and salesman who sold her a piece of property because of a failure to reveal the presence of severe termite damage and a carcinogen in the well water.⁸² After apportioning the purchaser's damages, the jury rendered a verdict awarding both compensatory and punitive damages in favor of the purchaser from which the defendants appealed on the contention that insufficient evidence was introduced.⁸³ Upon review, the court found that while the purchaser submitted sufficient evidence in regard to the termite damage, she had failed to present the same in proving her claim in relation to the chlordane in the well water.⁸⁴ Upon reliance of this determination, the Superior Court concluded that while the issues were submitted to the jury on instructions, which would have allowed a recovery for both, the jury's verdict did not define or label the damages that it chose to award.⁸⁵ The

77. *Id.* The Court of Common Pleas denied the owner's motion for judgment notwithstanding the verdict, but ordered a new trial. *Id.* The Supreme Court acknowledged that the burden was on the pedestrian to prove that the negligent condition existed on the sidewalk and proximately caused both the accident and her injury; however, it was concluded that under the evidence, the question was one for the jury. *Id.*

78. *Id.* at 299.

79. *Tonik*, 275 A.2d at 299. The facts referred to were the serious injury suffered; the length of time required for hospitalization and medical care; the long period of disability; the pain and suffering; and the present decreased purchasing power of the dollar. *Id.*

80. *Id.*

81. 564 A.2d at 188.

82. *Id.* at 190. The carcinogen found in the well water was chlordane. *Id.* "Chlordane" is a chlorinated, highly poisonous, volatile oil, formerly used as an insecticide. WEBSTER'S NEW WORLD COLLEGE DICTIONARY 258 (4th Ed. 1999).

83. *Smith*, 564 A.2d at 191. Jury ordered the salesman to pay \$2,500 in punitive damages and the agency to pay punitive damages totaling \$20,000. *Id.* Both defendants filed for a judgment notwithstanding the verdict. *Id.*

84. *Id.* at 192. The Court determined that there was no evidence showing any misrepresentation made regarding the presence of the chlordane or that the defendants concealed its presence in any way. *Id.*

85. *Id.* at 193.

court acknowledged that the verdict probably included compensation for both the damage caused by the termites, as well as the chlordane in the water.⁸⁶ Because no definite conclusion could be reached, the lower court decision was reversed and a new trial was ordered.⁸⁷ This decision added to the disturbance exceptions when the jury's verdict is based on damage issues that were not supported by the evidence, but were submitted to the jury, coupled with a valid issue, and the jury returns a verdict without defining or labeling the damages it awarded.⁸⁸

More recently, the superior court added a refining touch to this disturbance standard in its decision of *Sehl v. Vista Linen Rental Services, Inc.*⁸⁹ The issue before the court was whether a new trial was warranted based on the trial court's purported error to preclude testimony and in its charge to the jury.⁹⁰ In *Sehl*, a waitress commenced an action in the Court of Common Pleas of Philadelphia County against a launderer of a rug on which she slipped and fell, and a party that began providing services after the accident occurred.⁹¹ Although the jury awarded damages in favor of the waitress, on the contention of inadequacy, the waitress appealed.⁹² In light of the evidence presented, the court was unable to conclude that the award was unreasonable and therefore affirmed the judgment of the lower court.⁹³ The superior court left the duty of assessing damages within the province of the jury, but added that disturbance shall not occur unless there is a clear showing that the award resulted from prejudice, caprice, partiality, corruption or some other improper influence.⁹⁴

The Supreme Court of Pennsylvania successfully applied the appropriate standards in its decision of *Paves v. Corson*.⁹⁵ Faced with the difficulty of disturbing the jury's award, the Court analyzed all aspects thoroughly before it decided that a new trial was warranted. The court correctly recognized that disturbance is not warranted without proof of caprice, prejudice, partiality, corrup-

86. *Id.*

87. *Id.* at 194.

88. *Smith*, 564 A.2d at 190.

89. 763 A.2d 858 (Pa. Super. Ct. 2000).

90. *Id.* at 861.

91. *Id.* at 858.

92. *Id.*

93. *Id.* at 865.

94. *Sehl*, 763 A.2d at 864.

95. 801 A.2d 546 (Pa. 2002).

tion or some other improper influence.⁹⁶ The application of this well-known standard helped to determine that the evidence introduced at trial accurately demonstrated the loss suffered by Ms. Paves. The court properly concluded that the breakdown of the damages on the verdict sheet, not only indicated a conscientious consideration of the evidence presented, but also negated any claim of improper influence.⁹⁷

The court also correctly analyzed the allocation of damages issue. Before it decided that the jury properly allocated the damages, the court conducted a critical review of the lower court's instructions to the jury. In dispute was the allegation that the jury's award was designed to compensate Ms. Paves for the effects of emotional and physical abuse, both of which were dismissed claims. However, the court correctly determined that the instructions to the jury were clear that the damages sought for breach of duty and conversion were to remain separate from the damages for emotional and physical abuse.⁹⁸ These same instructions distinguished between those damages that could be proven with mathematical certainty and those that could not.⁹⁹ This emphasis in the instructions signified that the trial court made a clear effort to avoid any overlapping of damages. After analyzing such efforts, the court accurately determined that the jury awarded damages for the breach of duty and conversion claims, and not those of abuse claims.

A well-respected trust for the jury system has been demonstrated throughout the history of case law in Pennsylvania. The court was able to incorporate that trust and couple it with a thorough analysis of the issues before it. As a result, the historical notion that the assessment of damages falls within the province of the jury remains undisturbed.

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96. *Id.* at 549.

97. *Id.* at 550.

98. *Id.*

99. *Id.* In its instructions to the jury, the trial court explained that the damages sought for emotional distress and battery could not be proven with mathematical certainty and that only the damages for breach of duty and conversion constituted economic damages, which could be measured with mathematical certainty. *Id.*

